

two-way street. You can't do it if only one person wants to do the right thing. I have worked with Senator FEINSTEIN. She has been chairman of our committee, and I have been ranking member. I have been chairman, and she has been ranking member. We have always come together to do what is right for the military personnel who are defending our country as we speak today. We both believe in quality of life, good housing, good health care facilities, good childcare facilities, and all the things that we can provide in the purview of our bill. And now we have the veterans, which has been added to our bill this year, which is a great opportunity for us to continue to say thank you to those who have preserved the freedom for our generation.

We have come together on the goals, and I could not ask for a better partner.

Mrs. FEINSTEIN. Mr. President, I thank the Senator from Texas.

Mrs. HUTCHISON. I so appreciate that we can do this in the Senate, which is what we ought to be doing in every committee. I hope by our ability to do this—frankly, the Appropriations Committee, in general, does so—we will be able to create a better America for all of our constituents.

I thank the Chair and yield back all of my time.

Mrs. FEINSTEIN. I do, as well, Mr. President.

Mrs. HUTCHISON. Mr. President, we have already passed the resolution. When it comes from the House, we have deemed that it would be passed here.

With that, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### THE PATRIOT ACT

Mr. SESSIONS. Mr. President, I would like to share some thoughts on the PATRIOT Act which, unfortunately, seems to have reached an impasse. That is distressing to me. I can't imagine that we have allowed this to happen. It is very disappointing. The American people need to understand how important the act is and how little it impacts the liberties which we cherish and how carefully it was crafted so as to not impact our liberties. I would like to share a few thoughts about that.

Many of the key provisions of the act are scheduled to sunset at the end of this year. We will now presumably have to try to come back, in the few days we have in December, to complete the work. That is a very risky thing. We should complete this work today. Remember, those who do not sign up for this legislation, this conference re-

port, or support it and do it today, giving us time to vote on it before we leave for the year, are risking letting the PATRIOT Act expire. And with its expiration, the walls that prohibited our governmental agencies from sharing critical intelligence information will go back up. Those are the very walls that were structured between the FBI and the CIA and other agencies that blocked the sharing of intelligence information that, in retrospect, we believe could possibly have allowed us to find out about and stop the 9/11 attacks. Perhaps not, but those walls, those failures to be able to share intelligence between those agencies were a critical factor in our lack of cooperation prior to 9/11.

We passed the PATRIOT Act to fix that. It has worked extremely well. We should not go back to that time of the great walls.

The PATRIOT Act has, without doubt, made us immeasurably safer. I fully support the act's provisions as originally passed. The main goal of the act was then, and remains today, very simple: to give Federal law enforcement officers, the FBI, and other agencies the same tools to fight terrorists and agents of foreign powers as the tools they have—and virtually every law enforcement officer at the county, city and State level have—to fight other type criminals, drug lords, murderers, and even white collar tax evaders.

I do not believe we acted too hastily in passing the PATRIOT Act. We were focused on this act. We made a commitment not to alter any of the great protections that we had. We negotiated it intentionally. People made the most outrageous allegations and had the most incredible misinformation about what was in it. By the time we completed the intense negotiations and debate for weeks, it was voted for in the Senate by an overwhelming bipartisan majority of 98 to 1. The House voted it with a huge majority also, 357 to 66. This year we passed the bill unanimously out of the Senate Judiciary Committee, a contentious committee, a committee which has civil libertarians on the right and the left. We voted it unanimously out of that committee, and the Senate passed it by unanimous consent. As originally drafted, the PATRIOT Act does nothing to harm the civil rights and liberties of Americans.

I want to talk about that just a little. The Department of Justice inspector general, Glenn Fine, an appointee of President Clinton, has investigated all of the claims of civil rights and civil liberties violations received by the Department of Justice under the act. The independent inspector general found no incident in which the PATRIOT Act was used to abuse the civil rights or civil liberties of American citizens or anyone else.

I do not believe portions of this act must be significantly revised, or have additional so-called protections added. And, I do not believe that sections of

this act should be sunsetted. I will share with my colleagues the words of Attorney General Gonzales which he gave in a letter to our conferees as we tried to work out the final words for this act. He wrote to us and said—and no truer words have been spoken:

The terrorist threat against this country will not sunset, and neither should the tools we use to combat terrorism.

Let me mention a few of the provisions of the act that give us the tools that are so important. One is the roving wiretap provision. Roving or multipoint wiretaps have been available to criminal investigators for many years. But section 206 of the PATRIOT Act made sure that this tool was also available for fighting terrorism. It allows the FISA court, the special foreign intelligence court, to authorize a wiretap to move from device to device as the target of the wiretap, the target of the foreign intelligence investigation, changes modes of communication.

So let me tell you, though this has been approved as a legitimate law enforcement tool, and should continue to be a law enforcement tool, it is not that easy to obtain, you really have to prove you need a roving wiretap. I was a Federal prosecutor for over 15 years, a U.S. attorney, and I personally supervised and prosecuted a lot of cases. Let me just tell you how it works.

In my 12 years as U.S. attorney for the Southern District of Alabama, I think maybe we had two wiretaps. These are very difficult to obtain. You have to have probable cause to believe that a person is involved in criminal activity. You have to identify how he is using communication devices and then submit to the court a memorandum—and the ones that I have seen were 60 to 100 pages of facts—to prove to the judge's satisfaction that we are not snooping on somebody who is innocent, but we are actually attempting to understand the scope of major criminal activity.

The way it is monitored and managed is incredibly important because you have to listen to it constantly. If they talk about their family, you are supposed to turn it off. You have to have people listening all the time so that you can catch the evidence you are seeking. It is very expensive. You don't do it unless it is very important.

So I have to say, Mr. President, it is so important in a terrorism investigation that agents have this tool when they are on to a group or entity that is not just selling drugs, as bad as that is, but are intent on blowing up and killing thousands of American citizens. And when you are on to them and they start using this phone and that phone and that phone and you have run back to court with your 60-page memorandum and find a judge and set up a hearing date and all that, by that time he has maybe gone to another phone, a cell phone, a pay phone, a phone in a motel, wherever he moves.

So it is perfectly appropriate to have a wiretap if it is approved by a court

upon sufficient showing of probable cause. That is no doubt. All this does is to say that you can get the ability to intercept communications on that individual and then can use whatever phone he is using. Previously, the tradition was that you would have the wiretap on a single telephone number. This makes it clear that the court decisions allowing roving wiretaps are the law of the land, and it also creates a standard as to how they should be approved and utilized.

So I think that is an important tool for investigators. Can you imagine how important that is to an investigative team that may be working on a dangerous terrorist cell? It could be the difference of life and death for thousands of American citizens.

Let me mention another provision of the act. The objections to this one are so amazing to me. It just breaks my heart that people seem to have as much confusion about it as they do. This is the delayed notice search warrant. Under section 213, the PATRIOT Act created a nationally uniform process and standard for obtaining delayed notice search warrants. The act's standard applies to delayed notice warrants sought in any type of investigation, not just terrorism investigations. Delayed notice warrants are explained by the August 29, 2005 letter from the Department of Justice. They said:

A delayed-notice warrant differs from an ordinary warrant only in that the judge authorizes the officer executing the warrant to wait for a limited period of time before notifying the subject of the warrant because immediate notice would have an adverse result as defined by statute.

We must remember that delayed notice search warrants have been around for decades. As a matter of fact, I was reading a book not long ago about an organized crime matter that occurred years ago and they referred to a delayed notice search warrant. They didn't have any statutory standards for it at that time, but they asked the judge to allow them to delay notice, and the judge allowed it, and that process has been approved constitutionally.

The PATRIOT Act did not create any new authority or close any gap in delayed notice law because there was really no gap to close. It simply set a uniform statutory standard for getting permission to delay notice.

It is absolutely false to imply, as many have done, that these warrants are a way for the Government to "sneak and peak" into a civilian's home, papers, or effects without ever telling them. The truth is that they have to be told, but there is a delay between the search and when they are told. The critics have continued to suggest that these warrants are done without approval of a court, they want you to believe that because of the PATRIOT Act, the government can go into your house without a warrant and see what you have and never tell anybody that they have been there.

Nothing could be further from the truth. That is why this bill passed 98 to

1. We didn't write those kinds of broad provisions in this bill. We maintained the classic standard of approval of a search warrant, the probable cause standard and all that goes with it. The PATRIOT Act simply set an objective uniform standard for delayed notice.

Why is this important? Well, I could go into detail, but I would just ask you to imagine that one is surveilling a group that you have probable cause to believe is going to try to blow up an area of the United States and that you have probable cause to believe that they have planned to make a bomb. You could go in this residence while nobody is there pursuant to a search warrant on probable cause issued by a Federal judge and conduct a search. Normally, the only difference in these warrants is that you would normally tell the person whose house is searched immediately, and immediately report back to the Court. Here you have make a report but you don't have to tell the person you have searched their house until a later date set by the judge.

You may find in their house bombmaking materials papers on how to make a bomb, explosive devices, triggers, and those kinds of things. And it may be that from that you could obtain information from their house on who else was involved in the cell, to identify the entire ring, the entire cell, and arrest them all at once at an appropriate time. If you have to tell the person immediately, in some cases you risk tipping the whole group off and having them spread out like a covey of quail. That is what too often happens if you don't have this kind of tool. It is critically important to investigators trying to protect the United States of America that we preserve this section of the PATRIOT Act.

Section 215 of the PATRIOT Act allows the FBI to seek an order for the production of tangible things—books, records, papers, documents, and other items for an investigation to obtain foreign intelligence information. Basically, they are a form of subpoena authority. Section 215 orders must be preapproved by a judge and cannot be used to investigate ordinary crimes or even domestic terrorism. Opponents of section 215 have tried to create the impression that the FBI is using 215 to visit libraries nationwide in some sort of dragnet to check the reading records of everyday American citizens.

That is just not so. They have no interest in that whatsoever. Why would they? They are not doing that. I did get a letter from Rebecca Mitchell, director of the Alabama Public Library Service, who was critical of some of her colleagues who have been objecting to these provisions in the act. Her August 15 letter to me stated:

I want to personally thank up for your strong leadership stand on the PATRIOT Act. Our libraries should not be a tool for terrorism. I know you have received negative comments from the American library association on your stand but this is not the opinion of most librarians in our State. Please continue to fight to keep our Nation safe.

Please understand that no provision of the PATRIOT Act, including section 215, even mentions libraries or is directed at libraries. Nevertheless, as Director Mitchell points out, it is important that library records remain obtainable as one of the tangible records that section 215 can reach. Intelligence or criminal investigators may have very good and legitimate reasons for extending to library or bookstore records. For example, investigators may need to show that a suspect has purchased a book giving instructions on how to build a bomb.

I prosecuted a guy who had already had one book written about him, and after the prosecution, they made a second movie about him. We conducted a search warrant, a lawful search warrant that was upheld. We found a book called "Death Dealers Manual," describing how to kill people; and a book called "Deadly Poison," describing how to make deadly poison. That was great evidence to use to show that he was more than casually interested in murdering people.

Andrew McCarthy, a former Federal prosecutor who led the 1995 terrorism case against Sheik Omar Abdel Rahman, recently elaborated on this point in an article in National Review Online. This is what he said:

Hard experience—won in the course of a string of terrorism trials since 1993 [that he had personally been involved in] instructs us that it would be folly to preclude the Government a priori from access to any broad categories of business records. Reading material, we now know, can be highly relevant in terrorism cases. People who build bombs tend to have booklets and pamphlets on bomb making.

For heavens' sake, I would add, of course they do.

Terrorist leaders often possess literature announcing the animating principles of their organizations in a tone tailored to potential recruits. This type of evidence is a staple of virtually every terrorism investigation—both for what it suggests on its face and for the forensic significance of whose fingerprints that may be on it. . . . If he [a defendant] claims unfamiliarity with the tenets of violent jihad, should a jury be barred from learning that his paws have yellowed numerous publications on the subject? Such evidence was standard fare throughout Janet Reno's tenure—and rightly so.

Of course, she was Attorney General under President Clinton.

So this occurs in every courtroom in America. Documents are obtained through subpoena. It is stunningly dangerous that we would not understand this concept and why it is needed in the context of terrorism investigations.

I will add just a few additional thoughts on obtaining records and documents. An American citizen has an expectation of privacy and it is the right of an American under the Constitution to be free from unreasonable—unreasonable—search and seizures is guaranteed by our Constitution.

Where do you have privacy rights? If you give someone your personal papers,

you turn them over to them, do you still have privacy rights if they were to read them? Certainly not. So the law has developed many years in this fashion. You have an expectation of privacy in those areas of your life where you have control—the inside of your automobile, the trunk of your car, the glove compartment of your car, your desk at your office, any part of your house, your garage, an outbuilding around your house that you have exclusive control over. Those are areas over which you have exclusive control, and you have an expectation of privacy. People cannot go into those places and seize anything you have there without probable cause or else it would be an unreasonable search and seizure.

But if you go to a motel and fill out a motel receipt and give it to the motel operator, it is not yours. It is the motel's document, it is a business record. If you go to a bank and you open an account and they keep all kinds of records of that account, they are the bank's records, not yours. Every person in that bank has access to those documents and records. If you make a telephone call, the words you use are yours, and you have an expectation of privacy between you and the person who receives the call. But the fact that you make a telephone call and the telephone company prints out a billing statement that has telephone numbers on it, that is available to anybody who works in the telephone company. That is not your record, it is their record. So you do not have the same privacy expectations, that is all.

The court has always understood that. This has never been in dispute. Every district attorney in America, all kinds of law enforcement officers, State and Federal, through subpoenas, without court approval, have been able to obtain those kinds of documents if the documents are relevant to an investigation they are undertaking.

I received telephone toll records in drug cases I prosecuted. These kinds of records could be relevant in a terrorist case, make no mistake about it. You check the telephone numbers they call, and they are calling a certain number in New York City. Maybe you have records from another person, and they are calling that same number at various times of the day, and maybe right before a terrorist attack occurred or right after an attack occurred, phone calls are going back and forth. That is real evidence of who may be involved in a terrorist cell or criminal drug enterprise. That is how investigators work every day. That is what juries expect to see when cases are prosecuted. To have this great fear that there is something in this act that in a significant way alters those classical powers of investigators to find out those who may be trying to kill us—it is just not true. It is an exaggeration. It is a concern that is not real.

This PATRIOT Act is about to expire. It would be an abdication of our

responsibility as the Senate not to move this bill forward before the end of the year. Let's move it now. If we need to stay over the weekend, I am willing to do so. We can stay next week; I am willing to do so. It is important that we not allow this legislation to fail. I encourage the leaders on both sides to work toward achieving that goal.

#### TRIBUTE TO WILLIAM SMITH

Mr. SESSIONS. Mr. President, I wish to take a personal minute to share some thoughts and to bid farewell to my chief counsel on the Judiciary Committee, William Smith, who is sitting beside me. I know the Presiding Officer, the Senator from Georgia, knows Mr. Smith and admires him. He has been a great friend and a tremendous asset to this Senate. He will be returning to Alabama to practice at one of our State's most outstanding and prestigious law firms, Starnes & Atchison. Even more importantly, he will return to Alabama, accompanied by his soon-to-be bride, Diamond, to whom he will be married in early January.

But I am going to feel a great loss. The things he has done for me are innumerable, including helping us to prepare and pass this great act, the PATRIOT Act. Each day we have worked together, William has shown an unwavering dedication to his State, to his country, to me, and to the values we share. His passion for the law is unmatched, and his commitment to the rule of law is unwavering. I trust his judgment, and I have relied on him to manage our staff and our issues, confident that his work ethic and his ideals are beyond reproach.

Before joining the Senate, William had a distinguished legal career, having served as staff attorney on the Alabama Supreme Court and having taught at both Duke University School of Law and the University of Southern California School of Law.

In 2001, he moved to Washington, DC, to be my deputy chief counsel on the Subcommittee on Administrative Oversight and the Courts. He became my chief counsel the following year.

When William leaves the Senate at the end of this session, he will begin a practice focusing primarily on medical malpractice defense and commercial litigation. I have no doubt he will do well in this next venture of his life, and I have no doubt his principled approach, work ethic, and dedication are going to be difficult for this Senate to replace.

It is obvious my loss will be the State's gain. His presence in Washington was all our gain. William's work on the Senate Judiciary Committee is almost legendary. The Judiciary Committee takes an enormous number and wide variety of complex and sometimes controversial issues. It is one of the most demanding committees in the Senate.

To be successful as an attorney on that committee, you must not only be

hard working and intelligent, but a public servant who routinely works long hours. You must also be a tough negotiator, able to frame your arguments in a strong but respectful and intellectually honest way. William does all of this with seemingly effortless skill.

Evidence of William's dedication to and influence on the committee and its staff can most clearly be seen by simply looking at what his colleagues say about him.

Ed Haden, my former chief counsel of the Courts Subcommittee and currently a lawyer with Balch & Bingham in Birmingham, says:

William Smith is an example of a man who walks his principles. He is a Christian who lives it. He is a conservative who means it. He is a friend who is there for you. In a legislative body that fosters compromise, he will compromise on details, but not on his principle. How fortunate the United States Senate, the Judiciary Committee, and all of us who have worked for Senator SESSIONS have been to know and love this man.

Rita Lari Jochum, chief counsel for Senator GRASSLEY, says this:

William Smith is a smart lawyer, a shrewd strategist, a dedicated public servant, and an all around great guy. He sticks to his principles and values, and has been a rock solid role model for many of us. The Senate will miss a much respected colleague, and I will miss a true friend. Even though he will no longer be walking the halls of the Capitol, he will not be forgotten.

Stephen Higgins, chief counsel of the Judiciary Subcommittee on Terrorism, Technology and Homeland Security, chaired by Senator JON KYL, says this:

William Smith has an incredible love for this country and a great passion for his job. He is a devoted public servant and a forceful advocate for Senator SESSIONS.

Mary Chesser, chief counsel of the Judiciary Subcommittee on Corrections and Rehabilitation, chaired by Senator TOM COBURN, says this:

William is a great American, leader, mentor, and friend. His diligent work on the committee constantly inspires his colleagues. I feel honored to have worked with him. He has always represented Senator SESSIONS and the people of Alabama with impeccable character, wisdom, and insight. He will be missed.

Chip Roy, senior counsel for the Senate Judiciary Subcommittee on Immigration, Border Security and Citizenship, chaired by Senator JOHN CORNYN, says this:

William Smith has served the U.S. Senate admirably and with conviction. He personifies conservatism and the simple idea that there ought to be a limit to what we do here in Washington. While many staffers and members alike, Democrat and Republican, seem to succumb to the misguided notion that more government is better, William stands solidly on his strongly held belief that this simply is not the case. I will miss his strong sense of patriotism and his strong Christian faith, each of which serve as an example for all.

James Galyean, chief counsel on the Judiciary Subcommittee on Crime and Drugs, chaired by Senator LINDSEY GRAHAM, says this: